UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE
SUBREGION THIRTY-THREE

CORDOVA DREDGE, a division of
RIVERSTONE GROUP, INC.[1]
Employer,

and 25-RD-138605

NICHOLAS ALLEN BROLINE
Petitioner,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 150
Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on October 27, 2014, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine the appropriate unit in which the decertification election will be held and whether the petition is barred by the current collective bargaining agreement between the Employer and the Union.[2]

[1] The name of the Employer is corrected consistent with the stipulation of the parties at hearing.
[2] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

I. ISSUES

The Petitioner seeks a decertification election within a unit comprised of all full time and regular part time production, service, and maintenance employees used in the operation of power driven equipment working out of the Employer's Cordova, Illinois, facility; but excluding professional employees, office clerical employees, guards and supervisors as defined in the Act. The Petitioner and the Employer contend that this unit consists of the approximately six individuals who work at the Cordova Dredge facility. The Union, however, contends that there are two separate units at the facility, one unit of employees working at the Employer's water-based dredge operations and one unit of employees working at the Employer's land-based operation. The Union contends that since the instant petition was filed by an employee who works at the Employer's land-based operations, it only covers that unit of three employees.

Additionally, while the parties agree that there is a current collective bargaining agreement between the Employer and Union which is effective May 3, 2010, to May 3, 2015, the parties disagree whether this collective bargaining agreement operates as a bar to the election. The Petitioner and the Employer contend that there is no contract bar to the filing of the decertification petition since the contract can only operate as a bar for three years. The Union argues that the petition should be barred by the collective bargaining agreement because the three-year contract bar should be extended in this case to five years since employees covered by the collective bargaining agreement freely ratified the five-year contract.

II. DECISION

For the reasons discussed in detail below, including the parties' recognition of the employees as a single unit, the parties' bargaining history, and since the recognized unit is an appropriate unit, there is no need to disturb the recognized unit contained in the current collective bargaining agreement.

Additionally, for the reasons discussed in detail below, based on the record and relevant Board law, I conclude that the contract bar applies only for the first three years of a collective bargaining agreement, and thus, there is no contract bar in the instant case. Therefore, an election will be held in the following unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All production, service and maintenance employees used in the operation of power driven equipment, which is recognized as being within the jurisdiction of the I.U.O.E., at the Employer's Cordova, Illinois facility, but excluding office clericals, guards, supervisors and professionals as defined in the National Labor Relations Act, as amended

III. STATEMENT OF FACTS

The Employer, an Illinois corporation, is engaged in the production of crushed stone, sand, and gravel. The Employer's facility, hereinafter referred to as Cordova Dredge, located at

24620 222nd Avenue N., Cordova, Illinois, is the only facility involved in this matter.[3] The Union represents heavy equipment operators throughout northern Illinois, part of Iowa, and northwest Indiana. The Union and the Employer have been parties to various collective bargaining agreements, with the most recent collective-bargaining agreement being effective from May 3, 2010, to May 3, 2015. That agreement states that it is between Cordova Dredge, a Division of Riverstone Group, Inc., and the Union, Local Union No. 150, International Union of Operating Engineers.

A. The Employer's Operations

The Employer's facility is comprised of two operations, which are located less than two miles apart. One of the sites is called MC-14 and is a "water-based" operation. At this location, the Employer operates a floating dredge plant on the Mississippi River where sand and gravel is extracted from the river bottom and processed. The product is then deposited on water-based barges to be transported along the river to various loading yards. The Employer's other site is called MC-17 and is a "land-based" operation. At this location the Employer operates a smaller floating dredge plant on a hole dug by the Employer to the water line where sand and gravel is extracted and processed. The product at this site is deposited in stockpiles on land to be loaded on customer trucks. The MC-14 water-based operation has been in existence for approximately 50 years. The MC-17 land-based operation has only been in existence since the summer of 2009.

There are currently three employees who primarily work at the water-based MC -14 site. These employees work as a push boat operator, a plant operator and a dredge operator. Historically, when this worksite is operational, there are three employees. Currently there are three employees who work at the land-based MC-17 site, although this number has fluctuated during the time the site has been operational. All employees are supervised by the Superintendent of the facility. The Superintendent has an office near the MC-17 site, but oversees both sites. Each worksite utilizes different equipment and machinery. While the MC-14 site operates a dredge that is 150 feet long and 30-35 feet wide, the MC-17 site operates a much smaller version called a Mudcat dredge. Additionally, at MC-14 the employees operate a plant which processes the sand and gravel sorting them to the appropriate barges and a push boat. The boat pushes the empty barges to the dredge and full barges to the towline. At MC-17, in addition to the small Mudcat dredge, the employees operate front end loaders and a skid steer to move and load product. They also operate a man lift. The dredge located at MC-14 is utilized to collect two different types of gravel or sand. The MC-17 location has the capability of collecting two additional types of gravel and sand.

The employees at the two worksites generally report directly to their individual worksite. Their time is either written in by the Superintendent or they use a timeclock to clock in, depending on the site. There is no evidence that the employees share a common breakroom or regularly meet together with the Superintendent. Employees at the MC-14 site recently spent

[3] Riverstone Group, Inc. (which is the parent company of the Employer) and the Union maintain separate contracts for Riverstone Group's various facilities, which include the Employer, the Allied Quarry, the Cleveland Quarry, and the Midway Quarry.

about a 2 month period of time installing and operating the Mudcat dredge at the MC-17 worksite. Additionally, the Employer had required employees from MC-14 to assist in repair and maintenance of equipment at the MC-17 worksite. The employees at the MC-14 site are more experienced than those at MC-17 and are generally trained to operate all equipment at both locations. When the MC-17 site first became operational, an employee who previously worked at MC-14 began working at the site. The employees at MC-17, however, generally do not operate the equipment located at the MC-14 site. All employees are paid under the contract at a rate of $20.75 and pay union dues under the collective bargaining agreement. Additionally, the Employer pays into the Union's fringe benefit funds on behalf of all employees. The record indicates that there is one employee list by seniority for both locations.[4]

B. The Collective Bargaining Process

As stated above, the Riverstone Group and the Union maintain separate contracts for all five of its facilities, including the Employer. The contracts are negotiated simultaneously with a single team representing the Riverstone Group and a single team representing the Union at the negotiations. The Riverstone Group and the Union began negotiations for the current collective-bargaining agreement, as well as agreements covering its other facilities on April 23, 2010. The bargaining committee consisted of Union Treasurer Marshall Douglas, Union Business Agent Stephen Russo, and three employees from the various facilities.[5] Before new contract negotiations began, the Union met with employees at the Union's Hall in Rock Island, Illinois, to discuss upcoming negotiations and issues such as wages, benefits, working conditions, and length of the contract. At the April 23, 2010, bargaining committee negotiation meeting, the Riverstone Group proposed that the term of the contracts extend for five years. The bargaining committee met again on April 28, 2010. The final bargaining session occurred on May 17, 2010, where the Riverstone Group and the Union reached a tentative agreement. On May 22, 2010, the Union held a ratification meeting at its District 8 Hall where it explained the tentative agreements, including the duration of the contracts, to employees from the Employer, the Cleveland Quarry, the Allied Quarry, Moline Yard, and the Midway Quarry. The Union explained to employees that due to uncertainty with the new health care law and its affect on insurance rates, the employees would need to meet at a later date to vote on how to divide financial increases in the fourth and fifth year of the contract. The Union also explained that if the employees rejected the contract, the Union would schedule another negotiation session with the Employer to address any additional issues. After voting by secret ballot, twenty-two employees voted in favor of ratification, and one employee voted against ratification. After the meeting where the employees ratified the contract, the Union and the Riverstone Group made

[4] While there was testimony from an employee that he lost his seniority when moving from MC-14 to MC-17, the documentary evidence indicates that he maintained his original seniority date during his employment.

[5] No employee of the Employer was present for these negotiations.

final revisions and signed the various five-year collective bargaining agreements, including the one involving the Employer.[6]

On March 20 and 21, 2013, the Union and the Riverstone Group exchanged e-mails concerning the distribution of financial increases among the employees' health and welfare and pension. The following week, the Union met with employees to discuss the distribution, and the employees from the various locations voted how they wanted the financial increases distributed in 2013 and 2014. During this meeting, there were no discussions about the duration of the contract. The Union then notified the Riverstone Group via e-mail about the outcome of the employee vote regarding the distribution of financial increases.

IV. DISCUSSION

A. The Appropriate Unit

As set forth above, both the Petitioner and the Employer contend that the appropriate unit in this matter is the unit set forth in the collective-bargaining agreement between the Employer and the Union. This unit would consist of the approximately six employees employed by the Employer at its Cordova, Illinois facility who work at the MC-14 water-based and the MC-17 land-based operations. The Union argues that the employees employed by the Employer actually consist of two separate bargaining units, thus since the Petitioner works at the MC-17 location, that is the only unit involved in this proceeding and an election should be directed only among those employees working at the MC-17 land-based location.

It is well established Board policy that the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *W.T. Grant Co.*, 179 NLRB 670 (1969); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970); *WAPI-TV-AM-FM*, 198 NLRB 342 (1972); and *Mo's West*, 283 NLRB 130 (1989). The evidence in the instance case clearly supports the position that the recognized unit is all employees employed at the Employer's facility.

There is no dispute that the Employer and the Union are parties to a single collective bargaining agreement, the most recent of which is effective from May 3, 2010 to May 3, 2015. That agreement states that it is between Cordova Dredge, a Division of Riverstone Group, Inc. and Local Union. No. 150, International Union of Operating Engineers. The recognition clause of that contract reads as follows:

> The Company recognizes the Union as the exclusive bargaining agency for all production, service and maintenance employees used in the operation of power driven equipment, which is recognized as being within the jurisdiction of the I.U.O.E., but excluding office clerical, guards, supervisors and professionals as defined in the National Labor Relations Act, as amended.

[6] The Riverstone Group and the Union have used a similar negotiation and ratification process for predecessor agreements as they used during the 2010 negotiations for the current collective-bargaining agreements. Predecessor agreements have also lasted for five-year terms.

The Union argues that the employees who work at the MC-14 site and the employees who work at the MC-17 site have never been recognized as one bargaining unit and that they have always been treated as independent and unrelated units. However, the evidence does not support such a finding. There is no evidence that either party, or the employees, thought that the employees working at the MC-17 operation were anything other than production, service and maintenance employees operating power driven equipment within the jurisdiction of the Union, thus part of the bargaining unit recognized by the parties in the collective bargaining agreement. There is no indication in the collective bargaining agreement, which was entered into and ratified after the MC-17 land-based operations became operational, that the parties recognized two separate units of employees who operate equipment within the jurisdiction of the Union. The contract makes no reference to separate units, separate terms and conditions, or separate wages and benefits for the two operations.

The Union cites *Food Fair Stores*, 204 NLRB 75(1973) in support of its contention that the decertification petition must apply to only the MC-17 worksite, since there has been no effective merger of the two groups of employees and/or no effective accretion of the MC-17 employees to the original unit of MC-14 employees. In *Food Fair*, the Board did find a single store unit appropriate in the decertification proceedings, despite the employer recognizing the new store as an accretion to the existing multistore unit. However, in that case the evidence failed to show that in the 2 months since the employer's recognition of the new store as an accretion there had been an effective merger or any bargaining on a multistore level involving the new store. In the instant case, there is no evidence that the employees working at the MC-17 and the MC-14 jobsites have been treated as anything other than one unit since 2009. Thus, *Food Fair*, is inapposite to the instant case since it involved not only a unit which could be a separate unit, but also one which had not been merged into an existing overall unit. *Id.* at 76.

The Union also contends that the Board would not have certified a unit consisting of employees who work at the MC-14 and MC-17 sites based on traditional community of interest factors. Thus, to allow the employees to be combined into one unit would deprive the employees of their rights guaranteed by the Act. The Board has found that an exception to the general rule that the unit in which the decertification election is held must be coextensive with the certified or recognized unit if such a unit is repugnant to the Act or is not one which would have been found appropriate in an initial unit determination. Thus, the Board determined where the union was recognized as the majority representative of a mixed unit of guards and non-guards, a decertification election in such a unit would be contrary to Section 9(b)(3). See *Fisher-New Center Co*., 170 NLRB 909 (1968). Additionally, the Board has found that elections in single store units are appropriate where, upon withdrawal by the employer from multiemployer bargaining, the reasons for the multi-store grouping of several stores no longer exists and such a multi-location unit would not be found appropriate in an initial unit determination. *Albertsons, Inc.* 273 NLRB 286 (1984); *Arrow Uniform Rental*, 300 NLRB 246 (1990). In those cases, the issue is whether the multi-location bargaining history within the association is controlling, once the employer has timely withdrawn from the association, or whether the parties are free to reassess the scope of the unit using traditional community of interest criteria.

In the instant case, there is no evidence that the Employer belonged to or withdrew from a multi-employer association allowing for such reassessment of the scope of the unit. There is a history of collective bargaining encompassing employees at both the MC-14 and MC-17 site, as evidenced by the 2010 collective bargaining agreement which has been applied to all employees of the Employer. Further, a unit comprised of employees who work at both worksites is an appropriate unit for the purposes of collective bargaining.

The Employer's two worksites are located less than two miles from each other. The basic work done at both the MC-14 and MC-17 sites is similar and involves the extraction and processing of sand and gravel using floating dredge plants, albeit differing in size and the size of the body of water upon which each is located. When the Employer first started the MC-17 worksite, it was staffed with an employee who originally worked at the MC-14 location. All six employees are supervised by the Employer's superintendent who spends time at each site. Although, the employees may not see each other on a daily basis, employees from MC-14 have been required to assist with and maintain equipment on the MC-17 site. Additionally, employees from MC-14 spent considerable time this past year starting up the operations at MC-17 at the beginning of the operating year, working alongside the MC-17 employees. All of the employees operate similar equipment which falls under the jurisdiction of the Union. All employees are paid the same rate of pay and receive the same benefits as provided for in the collective bargaining agreement. Additionally, the Employer maintains one seniority list for the both worksites.

Based on the record evidence, a unit comprised of employees working at the MC-14 and the MC-17 worksites is an appropriate unit and contrary to the Union's contentions is not one which the Board would *not* certify. Even if separate units of MC-14 employees and MC-17 employees may also be appropriate, such does not negate the appropriateness of the historical unit previously recognized in the current collective bargaining agreement.

Therefore, based on the facts that the parties have historically applied the collective bargaining agreement to all of the Employer's employees at both worksites and the unit recognized in the current collective bargaining agreement encompasses all of the employees, it is found that the scope of the unit includes employees at both MC-14 and MC-17 worksites. Further, it is also found that there is no basis to disturb the recognized unit and such unit would otherwise be an appropriate unit.

B. The Contract Bar Issue

As set forth above, both the Petitioner and the Employer contend that there is no contract bar. The Union argues that the Board's established three-year contract bar should be extended to five years, especially in this case when employees ratify a five-year contract.

When a petition for an election is filed for a unit of employees covered by a collective bargaining agreement, the Board must decide whether the collective bargaining agreement constitutes a bar to the election under the contract bar doctrine. The doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of

free choice in the selection or change of a bargaining representative. *Direct Press Modern Litho, Inc.*, 328 NLRB 860 (1999), citing *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). The doctrine is Board created, not imposed by the Act or judicial case law, and the Board has considerable discretion to formulate and apply its rules. *NLRB v. Dominick's Finer Foods*, 28 F.3d 678 (7th Cir. 1994). A contract may serve as a bar to a representation election only for up to three years after its execution. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962) ("Contracts of definite duration for terms up to 3 years will bar an election for their entire period; contracts having longer fixed terms will be treated for bar purposes as 3-year agreements and will preclude an election for only their initial 3 years."); *see also General Dynamics Corp.*, 175 NLRB 1035 (1969). The party asserting a contract bar bears the burden of proof. *Road & Rail Services, Inc.*, 344 NLRB 388 (2005).

The Union raises policy arguments that the three-year contract bar rule exists under the guise of protecting employee free choice when it actually creates instability for collective bargaining relationships that rely on five-year agreements. Further, the Union argues that in this case the employees' free choice was protected because the employees were fully informed of the contract's five-year term when the employees ratified it, and the employees' choice was further reinforced by the fact that the employees later ratified the financial distribution for years four and five of the contract.

Despite the Union's policy arguments that the three-year contract bar creates instability for collective bargaining relationships and that employee free choice was protected by the ratification process in the instant case, the undersigned clearly has no authority to overrule or ignore what is clear Board precedent and policy.[7] The contract bar applies only for the first three years of a collective bargaining agreement, *General Cable Corp.*, 139 NLRB 1123 (1962), and thus, there is no contract bar in the instant case. Any changes to Board policy would have to be considered by the Board.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit described above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

[7] The undersigned takes administrative notice of the Decision and Direction of Election issued in both Case 25-RD-105145 and Case 25-RD-131754 where the Union raised the same argument regarding the extension of the contract bar rule. No contract bar was found in those cases under the Board precedent of *General Cable Corp.*, 139 NLRB 1123 (1962). The Board denied the Union's request for review of the Decision and Direction of Election in each of those cases because the Union raised no substantial issues warranting review.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the undersigned to assist in determining an adequate showing of interest. In turn, the list shall be made available to all parties to the election.

To be timely filed, the list must be received in the Subregional Office, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602-1246 **on or before November 28, 2014.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, www.nlrb.gov,[8] by mail, or by facsimile transmission at (309) 671-7095. The burden of

[8] To file the list electronically, go to the Agency's website at www.nlrb.gov, select **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election please furnish a total of two copies of the list, unless the list is submitted by facsimile or electronically filed, in which case no copies need be submitted. If you have any questions, please contact the Subregional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

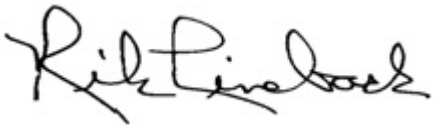
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **December 4, 2014**, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[9] A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

[9] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on E-File Documents**,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

SIGNED IN Indianapolis, Indiana, this 20th day of November 2014.



Rik Lineback
Regional Director
National Labor Relations Board
Region 25, Subregion 33
300 Hamilton Boulevard, Suite 200
Peoria, IL 61602-1246